

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE AVALOS,

Defendant.

8:13CR88

ORDER

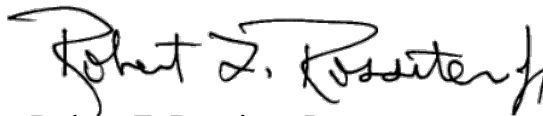
This matter is before the Court on defendant Jose Avalos’s (“Avalos”) pro se motion seeking a reduction in sentence due to COVID-19 (Filing No. 257). Title 18, section 3582(c)(1)(A)(i) authorizes federal prisoners to move the Court to “reduce [their] term of imprisonment” for “extraordinary and compelling reasons.” But a prisoner can only file such a motion *after* he “has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons [(“BOP”)] to bring a motion on his behalf or the lapse of 30 days from the receipt of such a request by the warden of his facility, whichever is earlier.” *Id.*; *see also United States v. Raia*, 954 F.3d 594, 595 (3d Cir. 2020) (denying a defendant’s motion under § 3582(c)(1)(A) because he did not give the BOP thirty days to respond to his request for compassionate release).

Avalos’s motion specifically states he has not taken any steps to exhaust his administrative remedies or otherwise comply with § 3582(c)(1)(A)(i). Avalos implies that he is not required to comply with the statute because he is not in BOP custody and is being held in the Grady County Correctional Center, in Chickasha, Oklahoma. Jurisdictional issues notwithstanding, Avalos’s failure to show he has complied with § 3582(c)(1)(A)(i)’s statutory prerequisites to judicial review “presents a glaring roadblock foreclosing compassionate release at this point.” *Raia*, 954 F.3d at 597 (finding strict statutory compliance necessary, particularly given the “BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread”). Accordingly, Avalos’s motion for

compassionate release is denied without prejudice to refiling when he can show he has met either statutory requirement.

Dated this 1st day of March 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge